

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**RECEIVED**

APR 21 2003

In the Matter of	)	FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY
	)	
Public Interest Obligations of TV	)	
Broadcast Licensees	)	MM Docket No. 99-360
	)	
Children's Television Obligations of	)	
Digital Television Broadcasters	)	MM Docket No. 00-167
	)	
Standardized and Enhanced Disclosure	)	
Requirements for Television Broadcast	)	MM Docket No. 00-168
Licensee Public Interest Obligations	)	
	)	
	)	
	)	
	)	

**COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION  
STATIONS AND THE PUBLIC BROADCASTING SERVICE**

The Association of Public Television Stations ("**APTS**") and the Public Broadcasting Service ("PBS") (collectively, "Public Television")' hereby submit comments in the above-captioned proceeding.

To refresh the record, the Commission has requested further comment regarding the public interest obligations of digital television broadcasters. The Commission has stated that it is particularly interested in issues relating to the application of public interest obligations to broadcasters that choose to multicast. It has asked, for instance, whether

---

<sup>1</sup> APTS is a nonprofit organization whose members comprise the licensees of nearly all of the nation's 357 CPB-qualified noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch and engages in planning and research activities on behalf of its members. PBS is a nonprofit membership organization of the licensees of the nation's public television stations. PBS distributes national public television programming and provides other program-related services to the nation's public television stations.

public interest obligations could be fulfilled by using one multicast channel or whether they should be spread out over all multicast channels.<sup>2</sup> Public Television believes that, given its public service mission and demonstrated public service record, no new public interest obligations are necessary for digital public television stations beyond those required for analog. Moreover, Public Television believes that stations should have the flexibility to satisfy whatever public interest obligations the Commission may require by using either the entire digital allocation or by using one multicast channel at the discretion of the licensee.

#### **A. No New Public Interest Obligations Are Necessary for Public Television**

No new public interest obligations are necessary for digital public television stations beyond those required for analog. This is because the very mission of public television is to serve the public interest. By statute, and pursuant to the policies established by the Commission and the Corporation for Public Broadcasting, the purpose of public television stations is to serve the public interest by providing educational and

---

<sup>2</sup> Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Broadcasters, Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Notice of Proposed Rulemaking, FCC 03-8, ¶112 (rel. Jan. 23, 2003) ("NPRM"). The Commission has also said that it was interested in whether its approach to multicast public interest obligations should vary with the scope of whatever final digital must-carry obligations it adopts. NPRM, ¶112.

informational services to the public.’ Taking this mission seriously, public television stations across the nation have provided thousands of hours of programming and services to address the needs of children and to enhance political discourse. In addition, public television stations have addressed the needs of their local communities of license by providing local programming and by engaging in local partnerships. Moreover, public television stations have maintained a steadfast and unwavering commitment to address unserved and underserved audiences, as well as to make their programming accessible to persons with disabilities. Detailed descriptions of the service Public Television provides to the public are set forth in our previous comments, which we hereby incorporate by reference.<sup>4</sup>

With the conversion to digital broadcasting, public television can continue this legacy of service and can accomplish so much more. The inherent flexibility and capabilities of digital television will enable public television stations to deliver a number of enhanced educational and public safety services to the public in ways that could only be dreamed of *in* the analog world. **As** the digital transition progresses, public television

---

<sup>3</sup> 47 U.S.C. §§ 396(a)(5) ([I]t furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation); 396(a)(6) (“[I]t is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities”); 396(a)(8) (“[P]ublic television and radio stations and public telecommunications services constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs”). In addition, CPB is authorized to “facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.” 47 U.S.C. § 396(g)(1)(A). See also 47 CFR § 73.621 (FCC rules requiring public television stations primarily to serve the educational needs of the community and requiring a noncommercial educational service).

<sup>4</sup> See Comments of the Association of America’s Public Television Stations, Docker MIM99-360 (March 27, 2000).

stations are evolving from broadcasters serving their local communities to interactive local public interest media institutions with deep ties to other public service institutions and citizens within their local communities

Public television transmitters, including noncommercial educational translators and developing on-channel repeaters, have the potential to provide localized noncommercial educational and public safety services over a broadband-like digital infrastructure to all Americans. The inherent flexibility of digital broadcast technology can allow for the delivery of data at extraordinary speeds in conjunction with a multicast television experience. This extraordinary data delivery mechanism, in conjunction with other technologies designed to provide a return path capability, can facilitate the delivery of high-quality noncommercial educational and public safety services through a broadband-like pipe

In this regard, public television stations have dedicated a portion of their digital bandwidth to providing access for all Americans to educational services. Public television stations have committed 4.5 megabits per second of their DTV bitstream (one-quarter of their digital channel capacity on average) to the delivery of formal educational services. This level of digital capacity will deliver data at rates 80 times faster than 56K dial-up modems and 15 times faster than digital subscriber line (DSL) connections. Three licensees – Wisconsin Public Television, the New Jersey Network and KCPT (Kansas City, MO) – have already demonstrated the power of this kind of data service for education.

- The Wisconsin Educational Communications Board has used DTV technology to deliver educational data overnight to local schools with computers equipped with DTV tuner cards. In two Madison elementary schools, fourth-graders are now able to view video

segments of downloaded material as many times as they wish and can explore additional resources such as graphics, written materials, and audio recordings. The enhanced resources include video segments, maps, photographs, historical documents, tours designed to help guide student learning, and audio segments of actual diaries. For teachers, there **is** an integrated teacher guide, teaching tips, and a list of related Wisconsin Model Academic Standards.

- New Jersey Network has produced original video content, which it datacasts to a media server located in Columbus Elementary School in Trenton, the pilot site. Teachers may then download from the server "on-demand" course supplements and NJN's customized, modular video segments to enhance the content in the lesson plan.
- Through its *New Jersey Workplace Literacy Program*, New Jersey Network has also been helping to address adult literacy through a groundbreaking partnership with the New Jersey Department of Labor in which it uses a variety of technologies, including its digital television signal, to deliver work force training materials to welfare recipients, dislocated workers and other job seekers to designated sites in New Jersey. NJN's first digital series, called JOBCAST, is broadcast on NJN's digital channel. NJN is now expanding this initiative to adopt in-school programs for teenagers, with private sector support.
- In addition, public television station KCPT (Kansas City, Missouri) is currently running a pilot project for datacasting to schools and colleges. The project will take datacasting from content preparation through delivery to two K-12 schools and two colleges and evaluate technical and instructional support needed by the end users. KCPT is using locally produced video and web content for the project, including *Waier and Fire, ihe Story of the Ozarks* and *Uniquely Kansas City*.

In addition, a fully digitized public television system could offer significant new public safety advantages. For example, on November 15, 2001, Kentucky Educational Television (KET), in partnership with the local branch of the National Oceanic and Atmospheric Administration (NOAA), debuted a new service to representatives from the state police, emergency management agency and weather service. KET commissioned

the development of software that allows it to use its digital broadcast capacity to immediately send emergency storm alerts, weather information, criminal profiles and updates, and other time-sensitive materials instantaneously to computers around the state. Transmission of this data over the digital broadcast signal decreases alert time and information lags from minutes to seconds. Use of the digital broadcast infrastructure can also bypass the congestion of wireline and cellular networks that can plague communications in emergency situations, as was recently demonstrated on September 11, 2001. And because public television transmitters and translators together reach nearly all American television households, such public safety services could be distributed on a universal basis to all Americans

Other examples of public television stations using their digital facilities to enhance homeland security include the following.

- In partnership with the University of Texas Medical Branch-Galveston, public television station **KERA** is using digital broadcast facilities to deliver crisis communications to discrete recipients or the public at large.
- In Missouri, public television station KMOS has engaged in a partnership with Central Missouri State University and the Missouri National Guard to develop a Continuity of Operation plan for the Guard's state operations center in the event of a crisis or disaster and to serve as a backup system for the Guard as well.
- In addition, the New Jersey Network has become the first in the nation to use public digital television to enhance emergency preparedness for nuclear power plants through the power and flexibility of datacasting. As New Jersey Governor James E. McGreevey observed, "Communications via NJN's digital television system is yet another tool with great potential to add to New Jersey's homeland security preparedness efforts and protect citizens in times of an emergency."
- Similarly, station KLVX in Las Vegas is using its digital system to enhance the security of Las Vegas' water lines. KLVX is also working with the Clarke County Emergency Preparedness office to take advantage of its current links to over 300 schools in the region that are designated as

safe evacuation sites in order to communicate with these centers in case of emergency.

## **B. Public Television Stations Should have the Flexibility to Satisfy Public Interest Obligations on One or Over Several DTV Multicast Channels**

Public Television believes that stations should have flexibility to satisfy whatever public interest obligations the Commission may require by using either the entire digital allocation or by using one multicast channel. Indeed, the hallmark of digital technology is its flexibility, the proper use of which the Commission has recognized should be within the discretion of the licensee. For instance, when considering whether broadcasters should be required to provide high definition programming, the Commission noted quite clearly that given the flexibility of the medium, it would unnecessarily stifle creativity and innovation to do anything but allow broadcasters the greatest discretion in serving their communities of license.<sup>5</sup> In cases such as this where a new medium is developing rapidly, the Commission has wisely refused to regulate it in ways that could foreclose its beneficial evolution

We do not know what consumers may demand and support. Since broadcasters have incentives to discover the preferences of consumers and adapt their service offerings accordingly, we believe it is prudent to leave the choice up to broadcasters so that they may respond to the demands of the marketplace. A requirement now could stifle innovation as it would rest on a priori assumptions as to what services viewers would prefer. Broadcasters can best stimulate consumers' interest in digital services if able to offer the most attractive programs, whatever form those may take. and it is by attracting consumers to digital, away from analog, that the spectrum can be freed for additional uses. Further, allowing broadcasters flexibility as to the services they provide will allow them to offer a mix of services that can promote increased consumer acceptance of digital

---

<sup>5</sup> "The DTV Standard will allow broadcasters to offer the public high definition television. as well as a broad variety of other innovative services. We believe that we should allow broadcasters the freedom to innvate and respond to the marketplace in developing the mix of services they will offer the public." Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, Fifth Report & Order. FCC 97-1 16, 12 FCC Rcd 12809, ¶ 41 (1997).

television, which, in turn, will increase broadcasters' profits, which, in turn, will increase incentives to proceed faster with the transition.<sup>6</sup>

For similar reasons, the Commission should forebear from micromanaging a licensee's allocation of public interest obligations over its digital allocation.

In addition, while it is within the Commission's authority to specify public interest obligations that attach to the granting of a broadcast license, detailing the distribution of such obligations over the programming schedule would come dangerously close to the kind of content regulation forbidden by federal statute and federal constitutional law.' Nor is there evidence that such regulations would appreciably increase the amount of public interest programming available on public television, given the overarching public interest mission and overall accomplishments of Public Television. In this regard, to impose detailed program distribution requirements on public television licensees would surely demonstrate a mismatch between the ends desired and the means used. Thus it would likely fail the constitutional standard of narrowly tailoring that courts use to review the regulation of broadcast content.'

---

<sup>6</sup> Id., ¶ 42.

<sup>7</sup> See 47 U.S.C. §§ 326, 398 (prohibitions on censorship) and U.S. Constitution, Amend. I

<sup>8</sup> See FCC v. League of Women Voters of California, 468 U.S. 364, **380** (1984).



## Conclusion

For the reasons stated above, Public Television requests that no new public interest obligations be created for digital broadcasters at this time and that digital broadcasters should have the flexibility to satisfy current public interest obligations either by using the entire digital allocation or by using one multicast channel in accordance with the licensee's editorial discretion

Respectfully submitted,

/s/ Marilyn Mohrman-Gillis  
Marilyn Mohrman-Gillis  
Vice President, Policy and Legal Affairs  
Lonna M. Thompson  
Associate Vice President  
Strategic Initiatives & Corporate Counsel  
Andrew D. Cotlar  
Senior Staff Attorney  
Association of Public Television Stations  
666 Eleventh Street, NW, Suite 1100  
Washington, D.C. 20001  
[www.aDts.org](http://www.aDts.org)  
Telephone: 202-654-4200  
Fax: 202-654-4236

/s/ Katherine Lauderdale  
Katherine Lauderdale  
Senior Vice President and General Counsel  
Paul Greco  
Vice President and Deputy General Counsel  
Public Broadcasting Service  
1320 Braddock Place  
Alexandria, Virginia 22314-1698  
[www.pbs.org](http://www.pbs.org)  
Telephone: 703-739-5000  
Fax: 703-837-3300

April 21, 2003